SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1970

THE KAHAN BANK AND BRADWAY BANK AND TRUST COMPANY, PETITIONERS,

v.

WILLIAM B. OLDS, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

LOUIS J. HALEY, JR., COMMISSIONER OF BANKS, DEPARTMENT OF BANKING, STATE OF NEW JERSEY, PETITIONER

v.

WILLIAM B. OLDS, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 376

THE RAMAPO BANK AND BROADWAY BANK AND TRUST COMPANY, PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

No. 406

JAMES C. BRADY, JR., COMMISSIONER OF THE DEPARTMENT OF BANKING, STATE OF NEW JERSEY, PETITIONER

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT CAMP IN OPPOSITION

OPINIONS BELOW

The opinions of the Comptroller of the Currency (Pet. App. 67a–83a)[1] and of the district court (Pet. App. 28a–

[1] "Pet. App." refers to the appendix to the petition for a writ of certiorari in No. 376. "App." refers to the appendix in the

66a) are not reported. The opinion of the court of appeals (Pet. App. 4a–27a) is reported at 425 F. 2d 333.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 1970. The petitions for a writ of certiorari were filed on July 10, 1970 in No. 376 and July 16, 1970, in No. 406. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Comptroller of the Currency properly authorized a national bank to relocate its main office to a nearby suburb and to retain its former main office site as a branch.

STATUTE INVOLVED

The National Bank Act, as amended, provides in pertinent part:

12 U.S.C. 30:

Change of name or location.

> Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, [with] the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty

court of appeals, a copy of which has been lodged with the Clerk of this Court.

miles distant, by the vote of shareholders owning two-thirds of the stock of such association. * * *

12 U.S.C. 36:

Branch banks.

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

* * * * *

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. * * *

STATEMENT

In May 1968, the respondent Prospect Park National Bank ("Prospect Bank") applied to the respondent Comptroller of the Currency for permission to relocate its main office from Prospect Park, New Jersey, to a site in the adjoining township of Wayne, New Jersey, a distance of 2.7 miles. The application

stated that the relocation was designed to relieve the severely overcrowded conditions in the main office, and to retain the banking business of the substantial number of the Prospect Bank's customers who were moving away from Prospect Park (an area of declining population and stagnant economy) to rapidly growing suburban areas such as Wayne (Pet. App. 5a–6a, 30a–33a, 67a–72a; App. 242a, 497a–508a, 278a–496a). In a simultaneous, but separate, application, Prospect Bank sought permission to retain its Prospect Park site as a branch to service the substantial number of its customers (particularly senior citizens) who would continue to require banking facilities in Prospect Park (Pet. App. 6a–7a, 67a–68a; App. 503a–504a).

Several banks, including the petitioners Ramapo Bank and Broadway Bank & Trust Company, and the petitioner New Jersey Banking Commissioner, opposed the applications (Pet. App. 8a–9a). After a full hearing, in which the petitioners participated (Pet. App. 24a–26a), the Comptroller approved both applications (Pet. App. 67a–83a). He found that Prospect Bank's main office in Prospect Park was "intolerably crowded" and "poorly suited for operations of a bank the size of" Prospect Bank; that the economic condition of Prospect Park was stagnant or deteriorating; that a substantial number of Prospect Bank's customers were moving to nearby suburban areas such as Wayne; that Prospect Bank would not be justified in spending a substantial sum of money to enlarge its

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The population of Prospect Park has declined slightly since the Prospect Bank was chartered there forty-five years ago (Pet. App. 31a, 69a).

present inadequate building in Prospect Park or to erect a new building there; and that Wayne was a "vigorously growing suburban community" whose population had grown substantially, due, in large part, to the population movement from urban areas such as Prospect Park (Pet. App. 69a–72a).[3] The Comptroller also found that the Prospect Bank intended to relocate its principal administrative functions in Wayne, and that the Bank's new main office would comply with the legal requirements for main offices of national banks as set forth in the National Bank Act (Pet. App. 78a–79a; see also *infra*, fn. 4). Based upon the foregoing findings, the Comptroller concluded (Pet. App. 75a):

> * * * that the proposed relocation of the main office of Prospect Park National Bank is in all ways *bona fide;* that it is a prudent and necessary step to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from * * * Prospect Park to * * * Wayne Township should be approved.

The Comptroller also found that convenient banking facilities were needed by many persons in Prospect Park, particularly senior citizens and employees of the small retail and service establishments located

[3] Wayne's population grew from 11,882 in 1950 to 29,353 in 1960 and to 47,000 in 1968 (Pet. App. 70a).

there, and that the banking business remaining in Prospect Park was substantial enough to warrant the maintenance of a branch there (Pet. App. 75a–76a). Accordingly, the Comptroller approved the branch application, but stated that since the Prospect Bank "would have the right to close this branch at any time the branch was deemed economically unfeasible simply by a resolution of the bank's board of directors and without the Comptroller's approval," his approval of the main office relocation was "in no way contingent upon the approval of this branch application or upon the bank actually establishing and operating such a branch" (Pet. App. 76a).[4]

[4] The National Bank Act provides that a branch of a national bank may be closed at any time by a resolution of the board of directors, without approval of the Comptroller or the shareholders (12 U.S.C. 24, 71); by contrast, a national bank's main office may only be closed by liquidation, merger or receivership, all of which are complicated processes requiring approval of the bank's shareholders and/or authorization of the Comptroller (12 U.S.C. 181–186, 191–200, 215–215a, 1828(c)). The Comptroller also noted other distinctions between a main office and a branch as provided in the National Bank Act (Pet. App. 79a). Thus, a national bank has but one capital structure authorized to its main office and not to its branches (12 U.S.C. 51); the lending limitations of a national bank are based on the capital structure of its main office without regard to the number of branches the bank may have (12 U.S.C. 84); the directors of a national bank are required to live within a prescribed geographic proximity to the main office without regard to the location of branches (12 U.S.C. 72); and no branch of a national bank has a separate board of directors or separate shareholders (12 U.S.C. 52, 71, 71a). As the Comptroller stated, the protestants did "not contest that the office which the Prospect Park National Bank proposed to establish in Wayne will be a *bona fide* main office under each of these criteria" (Pet. App. 79a).

Petitioners thereafter brought this action in the district court against the Prospect Bank and the Comptroller, seeking a declaration that the Comptroller's approval of the Prospect Bank's applications was unlawful and an injunction against the establishment of "a competitive banking facility in Wayne". (Pet. App. 10a; App. 518a).[5] The plaintiff banks argued that "[w]hether the office to be established in Wayne is to be a main office or a branch is the crucial issue, as we see it" (App. 560a).

The district court upon reviewing in detail the record before the Comptroller, ruled that there was "no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge and that, in fact, what is being called the main office is actually a branch" (Pet. App. 53a), and that "there is ample evidence from the record before the Comptroller to justify his opinion that the office in Wayne would be a main office and not a branch" (Pet. App. 60a). The court also determined that the Comptroller's approval of the main office relocation was in accord with 12 U.S.C. 30, *supra*, pp. 2–3, "the controlling statute with respect to the establishment of a main office by a national bank," and that the branch banking restrictions in 12 U.S.C. 36, *supra*, p. 3, were inapplicable to the relocation. (Pet. App. 44a). The district court also noted that "there [was] no dispute as to the

[5] Another protestant, the New Jersey Bank, also filed suit in the district court, but did not prosecute an appeal from that court's adverse judgment (Pet. App. 5a).

fact that if the Prospect Park National Bank's main office were, pursuant to approval of the Comptroller, legally relocated in Wayne, New Jersey law would permit it to maintain a branch office in the municipality of Prospect Park" (Pet. App. 47a).[6]

The court of appeals unanimously affirmed. In a comprehensive opinion, it held that "the Comptroller properly found that PPNB [Prospect Park National Bank] intends a *bona fide* move of its *main office* to Wayne," since (1) the relocated main office proposed by Prospect Bank was in accord with the "distinguishing characteristics" of a national bank's main office as set forth in the National Bank Act (see *supra*, fn. 4); (2) "prevailing economic conditions in Prospect Bank, as determined by the National Bank Examiner, the Regional Administrator, and the Comptroller, supported the relocation"; and (3) not only was there "no substance" in petitioners' claim that the relocation was a subterfuge to evade state banking laws, but "both the actions and intentions of the defendants were quite open and apparent" (Pet. App. 13a–17a). The court concluded that "branching considerations are inapplicable to the main office relocation of a national bank," and that "the *bona fides* of the relocation is governed solely by the statutory provisions of Section 30 of the National Bank Act," with which the Prospect Bank's relocation application concededly complied (Pet. App. 21a, 13a).

[6] As the court of appeals noted, Section 30 "requires that the relocated office (1) be within 30 miles of the former main office, (2) that it be approved by a two-thirds vote of the shareholders, and (3) that it have the approval of the Comptroller of the Currency" (Pet. App. 13a, fn. 22).

The court of appeals also rejected petitioners' contention that "state law restrictions must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions" (Pet. App. 24a). Moreover, the court of appeals questioned petitioners' interpretation of State law, stating that "it is not clear from the face of [the New Jersey statutes] that a state bank would be precluded from entering into Wayne by moving its principal office" (Pet. App. 21a, fn. 34). Finally, the court of appeals held that the record fully supported the district court's "extensive findings concerning the adequacy of the hearing afforded appellants and the completeness of the administrative record" (Pet. App. 24a-26a).

ARGUMENT

1. Petitioners' principal contention is that the Comptroller and the Prospect Bank, through the "clever" use of "labels," engaged in "a transparent maneuver" or "subterfuge" to "evade" and "circumvent state branching" laws by establishing a branch office in Wayne Township (Petition in No. 376, pp. 9, 11, 13, 15; Petition in No. 406, pp. 8, 10). Both the district court and the court of appeals, however, held that the administrative record amply supported the

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[7] The court of appeals also noted petitioners' concession "that if the relocation of PPNB's main office is lawful, there is no legal impediment to PPNB's retaining, or creating, a branch office in Prospect Park" (Pet. App. 19a, fn. 31). As the court stated, this is because "there is no other bank currently conducting business" in Prospect Park (Pet. App. 8a).

Comptroller's finding, made after full hearing, that the Prospect Bank intended a *bona fide* relocation of its main office into Wayne, and not the establishment there, through a subterfuge, of a branch office. There is no occasion for further review of this factual determination which, as the Statement shows, was correct.

Contrary to petitioners' assertion (Pet. in No. 376, p. 7; Pet. in No. 406, pp. 8–11), the decision below does not conflict with *Marion National Bank of Marion v. The Van Buren Bank*, 418 F. 2d 121 (C.A. 7), in which the Seventh Circuit prohibited a relocation of a national bank's main office and establishment of its former main office as a branch. Unlike the present case, the district court in *Marion* found that the relocation was not *bona fide* but was a "subterfuge for what is essentially an attempt by an established bank * * * to establish a branch" where Indiana law did "not * * * permit an established banking institution to venture into a new market [by establishing a branch] if this new market is already served by other banking institutions" (Pet. in No. 376, n. 8, pp. 14–15). In sustaining the district court's injunction, the court of appeals obviously relied upon that finding, since it explained that its affirmance rested "solely upon the basis that the maneuver proposed involves creation of a branch which would not be authorized to state banks by the statute law of Indiana and is therefore not authorized for national banks by 12 U.S.C. § 36(c). If creation, or retention, of a branch were subtracted from the proposal, this reason for deeming it unlawful would fail" (418 F. 2d at 125).

In the present case, in contrast, both courts held that the relocation was not a subterfuge or maneuver designed to avoid State law limitations on branching, but was a *bona fide* relocation of the main office dictated by changing business conditions. Moreover, although in *Marion* the courts concluded that State law would have prohibited the bank from establishing a branch in the area to which its main office was to be moved, the Third Circuit in the present case stated that it "is not clear * * * that a bank would be precluded from entering Wayne by moving its principal office," an issue the court found it "unnecessary" to resolve (Pet. App. 21a, n. 34). Finally, in *Marion* the court of appeals viewed the relocation of the main office and the establishment of a branch at the old office site as "a single indissoluble process" (418 F. 2d at 124); in the present case the Comptroller approved the relocation of the main office "whether or not the bank elects to retain a branch at the site of its old office in Prospect Park" (Pet. App. 76a, 82a).

There is thus no conflict on the question whether the Comptroller may authorize a national bank to move its main office when State law would prohibit the move as an impermissible attempt to establish a branch. Both circuits are in agreement that the Comptroller may permit a *bona fide* relocation of a main office; the Seventh Circuit in *Marion* expressly permitted the Comptroller to approve a proposal that "will not involve the creation or retention of a branch"

(418 F. 2d at 124).[7] The court of appeals in *Marion* agreed with the court of appeals in the present case that the relocation of a national bank depends upon Section 30 of the National Bank Act and does not "depend on state law" (*Marion*, 418 F. 2d at 123; present case, Pet. App. 22a).[8] Although the court of appeals in the present case stated that the Seventh Circuit in *Marion* had reached "a contrary result" (Pet. App. 20a), that comment may have reflected only the fact that the Seventh Circuit, concluding that the main office transfer was a subterfuge or maneuver, rejected the Comptroller's approval. In any event, even if the

[7] The bank in *Marion* subsequently moved its main office to the new location and, 13 days later, established a branch at its former main office site (Appellee William B. Camp's Opposition to Appellant's Motion for Injunction in court of appeals, filed May 5, 1970, p. 4; a copy of this document has been lodged with the Clerk). Thus, except for the fact that the original site of the main office was closed for 13 days, the result in the *Marion* case is consistent with the result here.

[8] The court below held that the Prospect Bank's relocation complied with the requirements of Section 30 of the National Bank Act governing relocations of main offices of national banks (Pet. App. 13a). Petitioner New Jersey Banking Commissioner contends, however, that Section 30 requires that all of the customer accounts be transferred to the new location (Pet. in No. 406, pp. 4-6). The court below properly rejected this contention, since there is "nothing in the language or history of Section 30 which requires the Comptroller to find that the bulk of customer accounts will be relocated with the main office before he is able to grant approval" (Pet. App. 16a). The court below further noted that the economics of the Prospect Bank's relocation were fully consonant with the congressional purpose behind Section 30, *i.e.*, "congressional recognition that relocation applications 'must naturally come from those parts of the country where population is rapidly changing or business is rapidly developing.' 17 Cong. Rec. 1350 (1886)" (Pet. App. 15a).

Third Circuit believed that its decision conflicted with *Marion*; there is in fact no conflict.

2. The court below correctly rejected petitioners' "competitive equality" argument, *i.e.*, the contention that "state law restrictions must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions" (Pet. App. 24a). This contention, as noted (*supra*, p. 11), rests on an interpretation of State law that the court below refused to accept.

"The National Bank Act constitutes 'by itself a complete system for the establishment and government of National Banks'" (*Deitrick* v. *Greaney*, 309 U.S. 190, 194; *Cook County Nat. Bank* v. *United States*, 107 U.S. 445, 448). This Court has uniformly held invalid State laws that without express Congressional sanction, would impair the ability of national banks to operate (*First Agricultural National Bank of Berkshire County* v. *State Tax Commission*, 392 U.S. 339; *Mercantile Nat. Bank* v. *Langdeau*, 371 U.S. 555, 558–559; *Franklin Nat. Bank* v. *New York*, 347 U.S. 373).

Congress has adopted State law restrictions on national banks in certain explicitly defined and narrow circumstances. For example, in 12 U.S.C. 36, Congress has made State law limitations on branching applicable to national banks.[10] This Court, however, has pointed out that considerations of "competitive equality" apply only "insofar as branch banking was concerned." *First National Bank* v. *Walker Bank*,

[10] See also 12 U.S.C. 24 Eighth, 51, 85, 90, 92a, 214c, 371.

5 U.S. 252, 261. In *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 134, the Court held that the meaning of the term "branch" is to be determined as "a matter of federal law, having in mind the congressional intent that *so far as branch banking is concerned* 'the two ideas [unit banking and branch banking] shall compete on equal terms and only where the States [allow] their own institutions [to] have branches.'" [Emphasis added.]

Neither *Walker Bank* nor *Dickinson* dealt with the question of the relocation of a main office pursuant to Section 30 of the National Bank Act. Indeed, this Court, in *Dickinson*, pointed out that a "branch" is a banking place "apart from" the bank's "main office" or "chartered premises" or "chartered place of business". 396 U.S. at 135, 137. Thus, considerations of "competitive equality" do not apply to a case like the present one where the Prospect Bank made a *bona fide* relocation of its main office into Wayne, and did not establish a branch there.[7]

In any event, the issue does not warrant further review. The Comptroller received, and has now pending, only a few applications for the relocation of a main office and the establishment of a branch at the old main office site; and he does not anticipate that

[7] The court below noted (Pet. App. 22a):

"It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886, and amendment in 1959, permits the inference that state law was intended to govern the movement of national bank main offices. It is equally clear that when Congress enacted Section 36(c) in 1927, and substantially

the number of such applications will increase. The applications of the Prospect Bank which the Comptroller approved and which are at issue in this litigation arise from fairly unusual facts. Thus, there is no ground for petitioners' concern (Pet. in No. 376, p. 11; Pet. in No. 406, p. 7) that, if the decision below is permitted to stand, "most, if not all" of the various State law restrictions on branching "may be avoided" or that "a substantial amount of uncertainty" will exist regarding "state regulation of branch banking."

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be denied.

Respectfully submitted.

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AUGUST 1970.

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amended it in 1933, nothing was said concerning the incorporation of state banking laws into Section 30 [footnote omitted]." This statement answers petitioners' contention (Pet. in No. 376, p. 15; Pet. in No. 406, p. 6) that the restrictions of Section 36 should be read into the entirely different provisions of Section 30. As previously noted, the court of appeals in *Marion*, *supra*, similarly agreed that the propriety of a main office relocation under Section 30 "is not made to depend on state law" (418 F. 2d at 123).

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